

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF PENNSYLVANIA

WILLIAM VICTOR, :
Plaintiff : **CIVIL ACTION NO. 1:20-425**
v. : **(MANNION, D.J.)**
(CARLSON, M.J.)
JOHN WETZEL, et al., :
Defendants :

ORDER

Presently before the court is the report and recommendation (“Report”) of Magistrate Judge Martin C. Carlson, ([Doc. 45](#)), which recommends that the court deny two motions, which are construed as motions for injunctive relief, filed by the plaintiff William Victor (“Victor”). ([Doc. 36](#); [Doc. 40](#)). Neither party has filed objections; however, two of the defendants, Anthony Iannuzzi and Dr. Mary-Joy Monsalud¹ (“Moving Defendants”), subsequently filed a motion to dismiss for failure to state a claim, ([Doc. 46](#)), after which Victor filed an amended complaint, ([Doc. 49](#)).

Even where no objection is made, the court should, as a matter of good practice, “satisfy itself that there is no clear error on the face of the record in

¹ Moving Defendants note that Victor incorrectly identifies Dr. Monsalud as “Dr. Monsulote.” ([Doc. 46](#), at 1).

order to accept the recommendation.” Fed.R.Civ.P.72(b) advisory committee notes; see also *Univac Dental Co. v. Dentsply Intern., Inc.*, 702 F.Supp.2d 465, 469 (M.D.Pa.2010) (citing *Henderson v. Carlson*, 812 F.2d 874, 878 (3d Cir.1987) (explaining judges should give some review to every report and recommendation)). Nevertheless, whether timely objections are made or not, the district court may accept, not accept, or modify, in whole or in part, the findings or recommendations made by the magistrate judge. 28 U.S.C. §636(b)(1); M.D.Pa. Local Rule 72.31.

In his Report, Judge Carlson notes that, although Victor’s motions are termed a motion for medical relief, (Doc. 36), and a motion to clarify, (Doc. 40), both contain sweeping requests for some form of preliminary injunction against a facility, the State Correctional Institute at Phoenix, that is outside the venue of this court, since it falls within the venue of the United States District Court for the Eastern District of Pennsylvania. Further, Judge Carlson observes that the motions address a series of matters that are not legally, logically, temporally, or topically related to the claims in this lawsuit; they request injunctive relief of a presumably permanent nature which goes beyond merely preserving the *status quo*; and that they seek relief from non-parties. Significantly, Judge Carlson observes that Victor has not, and

cannot, show that he has fully exhausted his administrative remedies pursuant to Prison Litigation Reform Act, [42 U.S.C. §1997e](#).

Finally, Judge Carlson notes that Victor has not met the procedural prerequisites for injunctive relief by showing a likelihood of success on the merits or that he will suffer irreparable harm and, moreover, the balance of interests weighs against the entry of a preliminary injunction. Thus, for all these reasons, Judge Carlson recommends this court deny Victor's two motions.

The court has conducted a thorough review of the Report, the pleadings, and the other filings of record, as well as the applicable law in this case, and the court agrees with the Judge Carlson's sound reasoning which led him to his recommendation. Accordingly, the court will adopt the Report in its entirety as the decision of this court.

Finally, with respect to the motion to dismiss filed by the Moving Defendants, ([Doc. 46](#)), the court observes that is now moot due to Victor's recent filing of the amended complaint, ([Doc. 49](#)), which does not include any allegations against Moving Defendants.

NOW, THEREFORE, IT IS HEREBY ORDERED THAT:

- (1) The Report of Judge Carlson, ([Doc. 45](#)), is
ADOPTED IN ITS ENTIRETY;**

(2) Victor's motion for medial relief, (Doc. 36), and his

motion to clarify, (Doc. 40), are **DENIED**;

(3) The Moving Defendants' motion to dismiss, (Doc.

46), is **DISMISSED AS MOOT**; and

(4) The matter is **REMANDED** to Judge Carlson

for further proceedings.

s/ Malachy E. Mannion

MALACHY E. MANNION

United States District Judge

DATE: January 5, 2021

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